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## 国际贸易 法律月刊

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## Article 文章

### Sunset Reviews - Timeline for filing of applications and issuance of notification imposing duties

#### 日落复审-提交申请和发布征税公告的时限

By **Geetika Francis**

Resolving an old and long-debated issue in anti-dumping investigations, the Division Bench of the Delhi High Court, delivered a judgment on 31 May, 2018 in *Kumho Petrochemical Co. Ltd. v. The Designated Authority & Ors.* [W.P. (C) 4886/2014]. It held that extensions of anti-dumping duty post expiry of the duty in force, whether it be one-year extension in the interim of sunset review or five-year extension in view of likelihood of recurrence or continuation of dumping and injury to the domestic industry pursuant to a sunset review determination, are both impermissible. The judgment interprets the legal provisions governing the levy and collection of duties in the interim of and pursuant to sunset review as contained in Section 9A(5) of the Customs Tariff Act, 1975.

#### Legal Provision

The legal provision under consideration pertains to the conduct of sunset reviews and states, in relevant part, as follows:

#### **“9A. Anti-Dumping Duty on dumped articles,-**

...

*(5)The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:*

**Provided** that if the Central Government, in a review, is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time

*to time, extend the period of such imposition for a further period of five years and such further period shall commence from the date of order of such extension:*

**Provided** further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.”

#### Factual background

The writ petition arose from the sunset review for extension of anti-dumping duties imposed on imports of rubber chemical known as PX-13 (6PPD) originating in or exported from China and Korea RP. The following facts and dates are relevant for following the progression in the matter:

30-04-2013	Initiation of sunset review with respect to certain Rubber Chemicals (including PX-13) from China and Korea RP.
04-05-2013	Expiry of definitive anti-dumping duty imposed pursuant to original imposition by Customs Notification No. 133/2008-Customs dated 12-12-2008.
05-07-2013	Issue of Customs Notification No. 17/2013-Customs (ADD)

	pursuant to second proviso of Section 9A(5) imposing duty retrospectively from 5-5-2013 for a one year period up to 4-5-2014, in the interim of the sunset review investigation. Thus, there was a gap of 60 days between expiry of anti-dumping duty and retrospective re-notification.
29-04-2014	Issue of final findings of the subject sunset review.
24-07-2014	Issue of Customs Notification No. 35/2014-Customs (ADD) re-imposing the anti-dumping duty for a further five-year period. Thus, there was a gap of 80 days when there was, effectively, no duty in force.

### ***Issues raised before the High Court of Delhi***

The petitioners challenged the following:

1. Validity of the extension of anti-dumping duty, post-expiry of the same, for the one year pending sunset review; and
2. Validity of the extension of anti-dumping duty, post-expiry of the extended one-year period, for the five years pursuant to the sunset review determination.

### ***Judgement of the High Court of Delhi and underlying assessment***

The High Court of Delhi allowed the petition filed by M/s Kumho Petrochemical Co. Ltd. and set aside:

1. The notice of initiation of sunset review dated 30 April, 2013;
2. The final findings dated 29 April, 2014 recommending continued imposition of duties pursuant to the sunset review;

3. Customs Notification No. 17/2013-Customs (ADD) dated 5 July, 2013 issued pursuant to second proviso of Section 9A(5) imposing duty retrospectively from 5-5-2013 for a one year period up to 4-5-2014, in the interim of the sunset review investigation;

4. Customs Notification No. 35/2014-Customs (ADD) dated 24 July, 2014 re-imposing the anti-dumping duty for a further five-year period.

### ***Basis for setting aside the notice of initiation of sunset review dated 30 April 2013***

The High Court saw it fit to set aside the notice of initiation in the present case as the underlying petition was filed on 9 April, 2013, less than a month prior to the expiry of the anti-dumping duty in force. In light of the prescribed guidelines as contained in DGAD Trade Notice No. 2/2011 dated 06.06.2011, the High Court of Delhi noted that a strict stipulation enjoins the DGAD to initiate sunset reviews on the basis of a duly substantiated petition *only when the same is filed at least 90 days prior to the date of expiry of the anti-dumping duty*. According to the Court, such prescribed time period should not be deviated from. The Court observed that requirement to adhere to timelines is an overriding feature of the anti-dumping duty regime and leniency shall not be shown in allowing delays in filing of the application for sunset review. .

It was argued by the respondent domestic industry that the petition had been filed well in advance, but was revised and refiled in April, 2013 with modified POI. The High Court dismissed the claim stating that such modification reflected that either the unmodified petition lacked substance or that it was replete with errors. .

Based on the foregoing, the High Court observed that the amended Petition filed

belatedly on 9 April, 2013 was, in effect, a new application and could not be treated as an application that was filed in a time bound manner. Accordingly, the High Court set aside the initiation of the sunset review investigation based on such delayed petition.

### **Basis for setting aside the Final Findings dated 29 April, 2014**

Having set aside the Notice of Initiation, as discussed above, the High Court went on to also set aside the final findings in this case.

### **Basis for setting aside the Customs Notification No. 17/2013-Customs (ADD) dated 5 July, 2013**

The primary issue raised in the petition pertained to the validity of the extension of anti-dumping duty, post-expiry of the same, for one year pending sunset review. In this regard, the High Court of Delhi held that the power under the second proviso to Section 9A(5), to “extend” an anti-dumping duty in the interim of an ongoing sunset review, after expiry of the original notification, is unavailable. The Court considered the recent judgment of the Supreme Court dated 9.6.2017 in *Union of India & Anr. v. Kumho Petrochemicals* [Civil Appeal Nos. 8309-8310/2017] wherein it was held that:

*“40. Two things which follow from the reading of the Section 9A(5) of the Act are that not only the continuation of duty is not automatic, such a duty during the period of review has to be imposed before the expiry of the period of five years, which is the life of the Notification imposing anti-dumping duty. Even otherwise, Notification dated January 23, 2014 amends the earlier Notification dated January 02, 2009, which is clear from its language, and has been reproduced above. However, when Notification dated January 02, 2009 itself had lapsed on the expiry of five years, i.e. on January 01, 2014, and*

*was not in existence on January 23, 2014 question of amending a nonexisting Notification does not arise at all. As a sequitur, amendment was to be carried out during the lifetime of the Notification dated January 02, 2009. The High Court, thus, rightly remarked that Notification dated January 02, 2009 was in the nature of temporary legislation and could not be amended after it lapsed.....”*

Thus, the High Court held that the Notification No. 17/2013-Customs (ADD) issued 60 days after the expiry of the levy of anti-dumping duty for the first five-year period, would be *non-est* because it sought to extend a levy which had lapsed on 04.05.2013. Specifically, the High Court observed that “*The phrase “may continue to remain in force”, assumes that there is a levy which exists and its continuance i.e. its carrying forward - without a break in its existence, is necessary. The moment the levy comes to an end or there is a break in its continuance, it cannot be revived in the Sunset Review exercise.... In the present case, the original levy came to an end on 04.05.2013. The levy had a limited life and unless fresh life was infused in it before its predetermined expiry date, it could not be deemed to have been extended. Infusion of fresh life into the levy for a period of one year requires a fresh notification, in addition to the notification for initiation of the Sunset Review. That not being so, in the present case the levy under impugned Notification is without authority, hence it has to be and is set aside.*”

### **Basis for setting aside the Customs Notification No. 35/2014-Customs (ADD) dated 24 July, 2014:**

Examining the second issue, the High Court held that the second notification, i.e., Notification No. 35/2014-Customs (ADD) dated 24 July, 2014, could not be sustained because it was not issued within the period of the original five years



or in the extended period of one year in the interim of the sunset review by which the earlier duty had been extended. It found that there was cessation of duty on 5.5.2013 and again on 5.5.2014, therefore, there was no duty on two dates which could have been extended.

In this regard, it remains open to interpretation whether the cessation of duty on 5.5.2013 alone could have led to the setting aside of the second customs notification (owing to the gap between the expiry of the original levy and the date of issue of the second notification) or whether such an outcome is the result of the two breaks, as in the present case.

The High Court also addressed the claims put forward by the DGAD and other Respondents that no delay could be found in the issue of the second notification, i.e., Customs Notification No. 35/2014 dated 24.7.2014 because it was notified within the timelines prescribed under Rule 18(1) of the Rules (within 3 months of the issue of final findings by the DGAD). The High Court noted that the timeline prescribed under Rule 18(1) is not a stand-alone authorization to the Government but rather, must be read in harmony with the rigid timelines of Section 9A(5) of the Act.

## Conclusion

The judgment introduces valuable clarity in terms of the timelines for levy and collection of anti-dumping duties. The following principles emerge from the judgment of the Delhi High Court:

1. An application seeking the initiation of a sunset review or claiming the likelihood of continuation or recurrence of dumping and injury to the domestic industry in case of discontinuance of duties must be filed well in advance, in line with the prescription of the DGAD;

2. Where the DGAD determines that sunset review merits initiation, it must ensure that the same is initiated prior to the expiry of the original period of levy;

3. Once a sunset review is initiated, the Customs notification extending the period of original levy must be issued prior to the expiry of such period;

4. Where the DGAD comes to the conclusion, in a sunset review determination, that there is a likelihood of continuation or recurrence of dumping and injury in case of revocation of duty and therefore, recommends the continuation of duties, then the notification of levy must be issued prior to the expiry of the original levy or prior to the expiry of the extended one-year period, whichever applicable;

5. There should be no break in between the levy pursuant to the sunset review determination and the original levy. The thread of the existing duty has to continue from the initial five year levy to the one year extended period of sunset review to the proposed five year period.

Further, it appears that the Designated Authority was aware of the lacunae in the procedures for the conduct of the sunset review and the difficulties posed by the same. Accordingly, the DGAD had issued Trade Notice No. 02/2017 dated 12 December, 2017 wherein it introduced strict timelines for the filing of the petition seeking sunset review as well as timelines for DGAD action, leaving sufficient time for issuance of Customs Notification, where required. The Trade Notice creates a time bound schedule to ensure that sunset review investigations would not suffer from procedural ambiguities.

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## Trade Remedy News 贸易救济新闻

### Trade Remedy measures against China

#### 对中国采取的贸易救济行动

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Activated Carbon 活性炭	USA 美国	Affirmative sunset review 肯定性日落复审	83 FR 26949 [A-570-904], dated 11-6-2018 2018 年 6 月 11 日, 83 FR 26949 [A-570-904]
Alloy aluminium sheet 铝合金薄板	USA 美国	Affirmative Preliminary Determinations in the sales at less than fair price Investigations 发布肯定性低于正常价值调查初裁	MOFCOM news, dated 19-6-2018 2018 年 6 月 19 日, 商务部新闻
Aluminium Extrusions 铝型材	Australia 澳大利亚	Termination of accelerated new shipper review 终止新出口商快速复审	Anti-dumping Notice No. 2018/98, dated 18-6-2018 2018 年 6 月 18 日, 反倾销公告第 2018/98 号
Aluminium Road Wheels 铝制轮毂	Australia 澳大利亚	Extension of time granted to issue Statement of Essential Facts and the Final Report 延期发布重要事实披露和最终报告	Anti-dumping Notice No. 2018/102, dated 20-6-2018 2018 年 6 月 20 日, 反倾销公告第 2018/102 号
Bicycles 自行车	EU 欧盟	ADD – Initiation of expiry review 反倾销-发起期终复审	EU 2018/C 189/05, dated 4-6-2018 2018 年 6 月 4 日, 欧盟 2018/C 189/05
Castings for Wind Operated Electricity Generators 风机铸件	India 印度	Re-examination of the Final Finding dated 28.7.2017 issued by Designated Authority, pursuant to CESTAT Final Order No. AD / A / 50938-50942 / 2018-CU [DB] dated 13.3.2018 根据 2018 年 3 月 13 日 CESTAT 的最终裁决调查机关重新评估 2017 年 7 月 28 日的最终裁决	F.No.14/28/2013-DGAD, dated 28-5-2018 2018 年 5 月 28 日, 第 14/28/2013-DGAD 号
Chlorinated Isocyanurates 三氯异氰尿酸	USA 美国	Final net subsidy rates determined 确定最终补贴税率	83 FR 26954 [C-570-991], dated 11-6-2018 2018 年 6 月 11 日, 83 FR 26954 [C-570-991]
Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel 碳钢和合金钢冷拔机械管	USA 美国	Anti-dumping duty orders issued and Final Determinations of Sales at Less Than Fair Value 发布反倾销征税令并且最终裁决低于正常价值销售	83 FR 26962 [A-570-058], dated 11-6-2018 2018 年 6 月 11 日, 83 FR 26962 [A-570-058]

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Cold-Rolled Steel 冷轧钢	Canada 加拿大	ADD and CVD investigations initiated 发起反倾销和反补贴调查	Canada Border Service Agency CRS 2018 IN, dated 8-6-2018 2018 年 6 月 8 日, 加拿大边境服务 署 CRS 2018 IN
Color Coated Steel Coils/Sheets 彩色涂层钢卷/板	Pakistan 巴基斯坦	ADD affirmative final finding 肯定性反倾销终裁	MOFCOM news, dated 14-6-2018 2018 年 6 月 14 日, 商务部新闻
Color Coated Steel Sheets 彩色涂层钢板	Indonesia 印度尼西亚	ADD duty imposed 征收反倾销税	MOFCOM news, dated 22-6-2018 2018 年 6 月 22 日, 商务部新闻
Critic acid 柠檬酸	Columbia 哥伦比亚	ADD affirmative preliminary finding but not to impose duty 肯定性反倾销初裁但不征收反倾销税	MOFCOM news, dated 21-6-2018 2018 年 6 月 21 日, 商务部新闻
Deep drawn stainless steel sinks 拉制深不锈钢水槽	Australia 澳大利亚	Extension of time granted to issue Statement of Essential Facts and Final Report 延期发布重要事实披露和最终裁决	Anti-dumping Notice No. 2018/84, dated 29-5-2018 2018 年 5 月 29 日, 反倾销公告第 2018/84 号
Digital Offset Printing Plates 数码印刷版	India 印度	Definitive anti-dumping duty rescinded 取消最终反倾销税	32/2018-Cus. (ADD), dated 1-6- 2018 2018 年 6 月 1 日, 32/2018-Cus. (ADD)
Folding Gift Boxes 折叠礼品盒	USA 美国	Antidumping Duty Order continued after sunset review 日落复审后继续反倾销征税令	83 FR 26414 [A-570-866], dated 7- 6-2018 2018 年 6 月 7 日, 83 FR 26414 [A-570-866]
Glycine 甘氨酸	USA 美国	Postponement of Preliminary Determinations of Countervailing Duty Investigations 延期发布反补贴调查初裁	83 FR 26415 [C-570-081], dated 7- 6-2018 2018 年 6 月 7 日, 83 FR 26415 [C-570-081]
Granite 花岗岩	Turkey 土耳其	Affirmative anti-circumvention final finding 肯定性反规避终裁	MOFCOM news, dated 22-6-2018 2018 年 6 月 22 日, 商务部新闻
Grinding Media Balls 研磨球	India 印度	Final Findings issued in sunset review recommending extension of duties for a period of five years 发布日落复审终裁建议延长 5 年征税期	F.No.7/7/2017-DGAD, dated 11-6- 2018 2018 年 6 月 11 日, 第 7/7/2017- DGAD 号
Kitchen igniter 厨房用点火器	Turkey 土耳其	ADD affirmative final finding 肯定性反倾销终裁	MOFCOM news, dated 20-6-2018 2018 年 6 月 20 日, 商务部新闻

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Large Diameter Welded Pipe 大口径焊管	USA 美国	Postponement of Preliminary Determinations in the Less-Than-Fair- Value Investigations 延期发布低于正常价值调查初裁	83 FR 27953 [A-570-077], dated 15-6-2018 2018 年 6 月 15 日, 83 FR 27953 [A-570-077]
Large Diameter Welded Pipe 大口径焊管	USA 美国	Affirmative Preliminary Determinations in the subsidy Investigations 发布肯定性反补贴调查初裁	MOFCOM news, dated 21-6-2018 2018 年 6 月 21 日, 商务部新闻
Metal grilles of protection 金属防护网罩	Argentina 阿根廷	ADD negative final finding 否定性反倾销终裁	MOFCOM news, dated 8-6-2018 2018 年 6 月 8 日, 商务部新闻
Metalized plastic globes 铝膜气球	Mexico 墨西哥	ADD affirmative final finding 肯定性反倾销终裁	MOFCOM news, dated 8-6-2018 2018 年 6 月 8 日, 商务部新闻
Multi function with Apparatus interchangeable Accessories 多功能手动料理机和搅 拌机	Argentina 阿根廷	ADD affirmative final finding 肯定性反倾销终裁	MOFCOM news, dated 6-6-2018 2018 年 6 月 6 日, 商务部新闻
New/unused Pneumatic Radial Tyres 新/未使用的充气子午 胎	India 印度	Corrigendum to initiation notification No.7/8/2018-DGAD dated 16.5.2018- Change in Name of Exporter 出口商更名发布修正	F.No.7/8/2018-DGAD, dated 7-6- 2018 2018 年 6 月 7 日, 第 7/8/2018- DGAD 号
Ofloxacin Ester / O- Acid 氧氟羧酸酯/氧氟羧酸	India 印度	Addendum to initiation notification dated 4.5.2018 for Anti-Circumvention Investigation 反规避调查修正发起公告	F. No. 7/14/2018-DGAD [AC] 02/2018, dated 1-6-2018 2018 年 6 月 1 日, 第 7/14/2018- DGAD [AC] 02/2018 号
Pencil 铅笔	Pakistan 巴基斯坦	ADD affirmative preliminary finding 肯定性反倾销初裁	MOFCOM news, dated 11-6-2018 2018 年 6 月 11 日, 商务部新闻
Pencil and color pencil 铅笔和彩笔	Turkey 土耳其	Initiation of anti-circumvention investigation 发起反规避调查	MOFCOM news, dated 20-6-2018 2018 年 6 月 20 日, 商务部新闻
PVC Flat Electrical Cables 聚氯乙烯扁平电缆	Australia 澳大利亚	Initiation of an investigation into alleged dumping and subsidization 发起反倾销和反补贴调查	Anti-dumping Notice No. 2018/86, dated 4-6-2018 2018 年 6 月 4 日, 反倾销公告第 2018/86 号
Railway Wheels 铁道轮毂	Australia 澳大利亚	Preliminary Affirmative Determination and imposition of securities 肯定性初裁并且征收保证金	Anti-dumping Notice No. 2018/99, dated 18-6-2018 2018 年 6 月 18 日, 反倾销公告第 2018/99 号



Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Rubber Chemicals (MOR) 橡胶用化学品 (MOR)	India 印度	Corrigendum to Customs Notification in order to rectify references to HS codes in Notification 修改公告 HS 代码	G.S.R. 497(E), dated 25-5-2018 2018 年 5 月 25 日, G.S.R. 497(E)
Silicon Metal 金属硅	USA 美国	Continuation of Antidumping Duty Order 继续反倾销征税令	82 FR 25644 [A-570-806], dated 4-6-2018 2018 年 6 月 4 日, 82 FR 25644 [A-570-806]
Sodium Hexametaphosphate 六偏磷酸钠	USA 美国	ADD sunset review initiated 发起反倾销日落复审	83 FR 25436 [A-570-908], dated 1-6-2018 2018 年 6 月 1 日, 83 FR 25436 [A-570-908]
Stainless Steel Flanges 不锈钢法兰	USA 美国	Countervailing Duty Order issued 发布反补贴征税令	83 FR 26006 [C-570-065], dated 5-6-2018 2018 年 6 月 5 日, 83 FR 26006 [C-570-065]
Stainless Steel Flanges 不锈钢法兰	USA 美国	Final Affirmative Determination of Sales at Less Than Fair Value 肯定性低于正常价值终裁	83 FR 26959 [A-570-064], dated 11-6-2018 2018 年 6 月 11 日, 83 FR 26959 [A-570-064]
Steel Concrete Reinforcing Bars 混凝土钢筋	USA 美国	ADD sunset review initiated 发起反倾销日落复审	83 FR 25436 [A-570-860], dated 1-6-2018 2018 年 6 月 1 日, 83 FR 25436 [A-570-860]
Steel Pallet Racking 钢制托盘货架	Australia 澳大利亚	Preliminary Affirmative Determination and imposition of securities 肯定性初裁并征收保证金	Anti-dumping Notice No. 2018/87, dated 18-6-2018 2018 年 6 月 18 日, 反倾销公告第 2018/87 号
Steel Propane Cylinders 钢制丙烷气瓶	USA 美国	Initiation of Countervailing Duty Investigation 发起反补贴调查	83 FR 28189 [C-570-087], dated 18-6-2018 2018 年 6 月 18 日, 83 FR 28189 [C-570-087]
Steel Propane Cylinders 钢制丙烷气瓶	USA 美国	Initiation of Less-Than-Fair-Value Investigations 发起低于正常价值调查	83 FR 28196 [A-570-086], dated 18-6-2018 2018 年 6 月 18 日, 83 FR 28196 [A-570-086]
Steel Wheels 钢制车轮	USA 美国	Postponement of Preliminary Determination in the Countervailing Duty Investigation 延期发布反补贴调查初裁	83 FR 26257 [C-570-083], dated 6-6-2018 2018 年 6 月 6 日, 83 FR 26257 [C-570-083],
Tool Chests and Cabinets 工具箱	USA 美国	Antidumping Duty Orders issued 发布反倾销征税令	83 FR 25645 [A-570-056], dated 4-6-2018 2018 年 6 月 4 日, 83 FR 25645 [A-570-056],

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Tungsten Electrodes 钨电极	EU 欧盟	ADD sunset review initiated 发起反倾销日落复审	MOFCOM news, dated 1-6-2018 2018 年 6 月 1 日, 商务部新闻
Wind Towers 风塔	Australia 澳大利亚	Initiation of an exemption inquiry 发起免税调查	Anti-dumping Notice No. 2018/89, dated 1-6-2018 2018 年 6 月 1 日, 反倾销公告第 2018/89 号
Xanthan Gum 黄原胶	USA 美国	ADD sunset review initiated 发起反倾销日落复审	83 FR 25436 [A-570-985], dated 1- 6-2018 2018 年 6 月 1 日, 83 FR 25436 [A-570-985]

## Trade Remedy actions by China 中国采取的贸易救济行动

Product 产品	Country 国家	Measure 措施	Notification No. and date 公告文号和日期
Broiler products 白羽肉鸡	Brazil 巴西	ADD affirmative preliminary finding 反倾销肯定性初裁	MOFCOM Announcement No. 46 of 2018, dated 8-6-2018 2018 年 6 月 8 日, 商务部公告 2018 年第 46 号
Certain Alloy-Steel Seamless Tubes and Pipes for High Temperature and Pressure Service 高温承压用合金钢无缝 钢管	US and EU 美国和欧盟	Initiation of ADD mid-term review 发起反倾销期中复审	MOFCOM Announcement No. 52 of 2018, dated 15-6-2018 2018 年 6 月 15 日, 商务部公告 2018 年第 52 号
Hydriodic acid 氢碘酸	USA and Japan 美国和日本	ADD affirmative preliminary finding 反倾销肯定性初裁	MOFCOM Announcement No. 49 of 2018, dated 16-6-2018 2018 年 6 月 16 日, 商务部公告 2018 年第 49 号
Monoethanolamine, 2- Aminoethanol, 2- Aminoethyl alcoho 乙醇胺	US, Saudi Arabia, Malaysia and Thailand 美国、沙特阿 拉伯、马来西 亚和泰国	ADD affirmative preliminary finding 反倾销肯定性初裁	MOFCOM Announcement No. 50 of 2018, dated 16-6-2018 2018 年 6 月 16 日, 商务部公告 2018 年第 50 号

Oriented electrical steel 取向电工钢	Japan, Korea RP and EU 日本、韩国和欧盟	Accepting price undertaking 接受价格承诺	MOFCOM Announcement No. 11 of 2018, dated 5-6-2018 2018 年 6 月 5 日, 商务部公告 2018 年第 11 号
Styrene 苯乙烯	Korea RP, Taiwan Region and USA 韩国、台湾地区和美国	ADD affirmative final finding 反倾销肯定性终裁	MOFCOM Announcement No. 43 of 2018, dated 22-6-2018 2018 年 6 月 22 日, 商务部公告 2018 年第 43 号
Sulfamethoxazole 磺胺甲噁唑	India 印度	ADD measure terminated 取消反倾销措施	MOFCOM Announcement No. 45 of 2018, dated 8-6-2018 2018 年 6 月 8 日, 商务部公告 2018 年第 45 号



## WTO News 世贸组织新闻

### 加拿大、欧盟和墨西哥队美国的钢铁和铝产品关税发起世贸争端解决

6 月 6 日和 7 日, 世贸组织发布了由加拿大、欧盟和墨西哥提出的磋商请求, 要求就美国对某些进口钢材和铝产品的关税问题与美国进行磋商。各成员在各自的磋商请求中声称, 自 2018 年 6 月 1 日起美国对来自这些国家的某些钢铁产品进口征收额外 25% 的关税, 对铝产品进口征收额外 10% 的关税。据称, 这些措施与 1994 年关贸总协定以及保障措施协定不一致。具体地说, 请求声称美国的做法违反了 1994 年关贸总协定第 I:1、II:1(a) 和 (b)、X:3(a)、XI:1、XIV:4、XIX:1(a) 和 XIX:2 条以及保障措施协议第 2.1、2.2、3.1、4.1、3.1、4.2、5.1、7、9.1、11.1(a)、11.1(b)、12.1、12.2、12.3 和 12.5 条。此外, 墨西哥还质疑该措施违反了 1994 年关贸总协定第 XXIII:1(b) 条并且在第 XXI(b) 条方面是不可辩护的。值得注意的是, 印度已经 (于 2018 年 5 月 18 日) 抗议了上述两种产品的附加关税。

### 欧盟对中国的知识产权保护提出抗议

6 月 6 日, 世贸组织发布了欧盟提交的磋商请求, 要求与中国就有关外国技术转让给中国的某些中国措施进行磋商, 欧盟称这与中国在 WTO 与贸易有

关的知识产权 (TRIPS) 协定下的义务不符。欧盟认为, 这些措施对外国公司向中国转让技术的知识产权保护产生不利影响。根据欧盟代表团的沟通, 中国的措施似乎歧视外国知识产权持有者, 并限制外国权利人在中国对某些知识产权的保护能力, 这与中国在 WTO 的义务相违背。

### 欧盟对空客补贴发起新的世贸组织执行程序

6 月 6 日, WTO 发布了根据争端解决谅解第 21.5 条由欧盟提出的磋商请求, 请求与美国进行磋商。欧盟声称, 欧盟及其成员国已经遵守了最近采纳的关于空客补贴案的上诉机构的 (执行) 报告。欧盟声称其已撤销剩余的补贴, 并采取适当措施消除它们的不利影响

### 本地成分要求-俄罗斯欲自 2018 年 7 月 1 日起结束其不符合 WTO 规则的汽车投资项目

6 月 1 日, 在贸易相关投资措施委员会 (TIMS) 的会议上, 俄罗斯通知 WTO 成员, 它将截至 2018 年 7 月 1 日终止其与 WTO 不一致的汽车投资项目, 这是其加入世贸组织议定书中规定的最后期限。这些项目允许汽车投资者在满足本地成分要求 (LCR) 条件下免税进口汽车零部件。

委员会还讨论了与日俱增的各国在各个行业采取的各种本地成分措施。讨论范围包括中国在网络安全法中规定的本地成分的措施，该措施被认为构成中国推动在信息和通信技术（ICT）和其他行业中更多地使用中国国内产品；印度尼西亚在诸如传统能源和可再生能源一类的新行业中盛行国内成分政策；尼日利亚的国内成分措施涉及能源和 ICT 部门；俄罗斯的进口替代政策要求俄罗斯国有企业和其他实体采购国内货物和服务以及发布新的激励政策，推出了采购原产自俄罗斯的货物或服务可获得 15% 的价格优惠；阿根廷有关汽车零部件行业的本地成分措施和土耳其在制药部门的本地成分措施。

### 对于印度出口措施案成立专家组

世贸组织已于 2018 年 5 月 28 日成立了专家组，审查某些印度的出口措施。美国认为这些出口补贴违反了世贸组织关于补贴和反补贴措施的协议

。美国声称，印度似乎通过各种出口促进计划、特别经济区和出口免税进口计划提供此类补贴。欧盟、加拿大、中国、埃及、日本、哈萨克斯坦、韩国、俄罗斯和斯里兰卡保留了第三方权利参与专家组程序

争端解决机构还同意韩国提出的争端解决专家组的请求，审查美国对韩国某些产品的反倾销和反补贴税，以及在“*美国-在某些产品的反倾销（AD）和反补贴（CV）案中使用可获得的事实（DS539）案*”。DSB 的下一例会定于 6 月 22 日举行。

### 土耳其对钢铁产品发起保障措施调查

2018 年 5 月 2 日，土耳其通知 WTO 保障措施委员会，其于 2018 年 4 月 27 日发起了对钢铁产品的保障措施调查。有关各方已被要求在公报公布之日起 30 天内填写调查表，并将其提交给调查总局。



## India Customs & Trade Policy Update 印度海关和贸易政策更新

### 通过电子商务邮寄出口货物-规定了新程序

根据新的 2018 年邮寄出口规则，只要提交出口邮寄申报（PBE），所有持有效进出口代码的出口商都允许通过外国邮局（通过电子商务）出口货物。2018 年 6 月 4 日的 CBIC 第 14/2018-Cus. 号规定了由公司（除自然人以外）提交手工 PBE 的详细程序，规定了这些出口商有资格对出口进行零评级。新条例将从 2018 年 6 月 21 日起生效。此外，根据 2018 年 6 月 13 日发布的第 18/2018-Cus. 号海关公告，CBIC 已允许在多个发货给多个收货人的情况下使用 PBE-II

### 项目出口的 MEIS 申请-对外贸易总局公布程序

对外贸易总局发布了详细的指导方针，以解决项目出口商根据第 98 章填写的海运单据以获得 MEIS 优惠所面临的问题。目前，项目出口可获得更高

的优惠，但出口商只能使用特定的 HS 编码。根据该指导方针，NIC 将创建一个“标识标签”，出口商将在线提交申请，然后向对外贸易总局的 HQS 提交少量文件。NIC 将根据对外贸易总局的指令修改申请程序，RA 将在 NIC 告知变更后发出进项税单

### 出口型企业-国内关税区特定服务的“清关”包含在“货物”内

出口型企业（EOU）在国内关税区（DTA）销售 GST 第 9988 和第 9989 项下所列的服务将被包含在对外贸易政策第 6.08(a) 段中。根据 2018 年 6 月 7 日发布的第 10/2015-20 号修正，这些包含在对外贸易政策第 9.31 段的服务被认定为货物制造，将继续包含在除珠宝以外的货物的第 6.08(a) 段中。在这方面，Para 6.08 (b) 的修正案还规定，在国内关税区清关时，GST 和费用补偿将适用





## Ratio Decidendi 判决理由

### 特殊附加税返还不得被拒绝，如果发票上的内容与公告上不一致

卡纳塔克邦高等法院认为，即使第 102/2007-Cus. 号规定了发票中应包含的字样，以利于退还特殊附加税（SAD），但是如果发票含有说明相同意图的其他字眼，并不能否认这项利益返还。高等

法院在这方面观察到，商业发票中的“不申报 SAD”是一种肯定的说法，即不可获得中央增值税抵扣，从而满足公告的条件。法院在允许返还的同时还观察到该条件只是程序性的。  
[*Commissioner v. Schneider Electric – CSTA No. 8 of 2015*, 2018 年 6 月 5 日, 卡纳塔克邦高等法院]

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